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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45

Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)

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Executive summary

Violence against women and girls continued unabated during the period covered by this report (1997-2000). Unimaginable brutality was perpetrated against women and girls in conflicts ranging from Afghanistan to Chechnya, from Sierra Leone to East Timor. The report illustrates how, since 1997, women and girls have been raped by government forces and non-State actors, by police responsible for their protection, by refugee camp and border guards, by neighbours, local politicians, and sometimes family members under threat of death. They have been maimed or sexually mutilated, and often later killed or left to die. Women have been subjected to humiliating strip searches, forced to parade or dance naked in front of soldiers or in public, and to perform domestic chores while nude. Women and girls have been forced into "marriages" with soldiers, a euphemistic term for what is essentially repeated rape and sexual slavery, and they and their children have suffered disabilities as a result of exposure to chemical weapons.

The Special Rapporteur gives special attention in the report to the specific risks faced by girl children during armed conflict and the specific gaps in protection and assistance to women who are internally displaced. She also underscores her growing alarm about women being trafficked from refugee camps and other shelters set up for their protection, as well as being trafficked to service United Nations peacekeepers in countries where such peacekeepers are located. In particular, the Special Rapporteur expresses concern about the growing number of reports of rape and other sexual abuse committed by United Nations peacekeeping forces and staff, and by soldiers and staff associated with military bases around the world, and emphasizes the particular responsibility that the Organization has for taking appropriate steps to prevent such abuse.

The Special Rapporteur also highlights the ongoing violence and discrimination that women face in the rehabilitation and reconstruction process, and notes that although women make up the majority of heads of household in most post-conflict situations, their families and their needs are rarely adequately factored into international donor and reconstruction programmes, or the distribution of humanitarian aid. The Special Rapporteur stresses that women must be brought into all levels of the United Nations, including in peacekeeping and civilian police units, and those with gender-specific expertises must be included in senior management throughout the Organization if the United Nations is to develop appropriate and effective policies to protect and assist women and girls during and after armed conflict. What is more, women must have a greater role in the peace process, during which time the framework for future government structures and administration are set in place, and a concerted effort must be made to involve women in society's efforts to address the past.

The report also documents the positive jurisprudential and structural developments that have taken place during the past four years; the international community has begun to develop precise legal standards to make clear, once and for all, that rape and other gender-based violence can be war crimes, crimes against humanity, and components of the crime of genocide, as well as torture or other cruel, inhuman and degrading treatment and enslavement. The report reviews the important work of the International Tribunals for the Former Yugoslavia and Rwanda that have set jurisprudential benchmarks for the prosecution of wartime sexual violence. In addition to the work of the ad hoc tribunals, the report discusses the single greatest development since the Special Rapporteur's last report - the approval on 17 July 1998 of the Statute of the International

Criminal Court (ICC), known as the Rome Statute, which specifically defines rape and other gender-based violence as constituent acts of crimes against humanity and war crimes. The Rome Statute also addresses numerous structural issues - including the need to hire judges and prosecutors with special expertise in violence against women and children and the establishment of a Victim and Witness Unit - that are critical if the Court is to function as a progressive mechanism for justice for victims of gender-based violence.

The Special Rapporteur wishes to emphasize that there remains a significant gap between the international community's recognition that those who commit rape and other gender-based violence are legally liable and must be punished, and the political will of Member States to enforce international humanitarian and human rights law and insist that those who violate it are held accountable. The ongoing impunity of those who perpetrated Japan's system of military slavery during the Second World War is only one of many examples of an ongoing failure by Member States to investigate, prosecute and punish those found responsible for past acts of rape and sexual violence. This failure has contributed to an environment of impunity that perpetuates violence against women today. Whether the violence described in this report is investigated and punished, and whether such acts are prevented in the future depends ultimately on the firm commitment of the States Members of the United Nations.

I. INTRODUCTION

1. The Commission on Human Rights, at its fifty-sixth session, in its resolution 2000/45, welcomed the report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2000/68 and Add.1-5) and encouraged her in her future work. In the same resolution, the Commission decided that the mandate of the Special Rapporteur should be renewed for a further three years and requested the Special Rapporteur to report annually to the Commission on Human Rights, beginning at its fifty-seventh session, on activities relating to her mandate.

2. In follow up to her previous report on violence against women as perpetrated and/or condoned by the State (E/CN.4/1998/54)[1], the present report focuses on violence against women in armed conflict, specifically in terms of the recommendations made in the Special Rapporteur's report to the Commission on Human Rights in 1998. The report also documents emerging legal standards on armed conflict and violence against women, reflects upon future directions and unresolved issues, and includes a general consideration relating to violence against women and armed conflict (1997-2000) including a number of country case studies.

Working methods

3. In an attempt to provide a systematic review of States' compliance with their international obligations with respect to State-perpetrated and/or -condoned violence against women during armed conflict, the Special Rapporteur requested Governments to provide her with written accounts on how State practice and policy have been brought into compliance with recommendations made to the Commission on Human Rights in 1998.

4. The Special Rapporteur also constituted a research team from experts around the world to assist her in reporting to the Commission on matters relating to violence against women during times of armed conflict for the period 1997-2000. The results of such research are included in the present report.[2]

Country visits

5. The Special Rapporteur would like to draw the attention of the Commission on Human Rights to the report of her mission to Bangladesh, Nepal and India (28 October-15 November 2000) on the issue of trafficking of women and girls (E/CN.4/2001/73/Add.2).

6. The Special Rapporteur would like to take this opportunity to express her appreciation to the Governments of Bangladesh, Nepal and India for facilitating her visit and enabling her to meet with all relevant interlocutors, both governmental and non-governmental, in the three countries. The Special Rapporteur regrets that her visit to Sierra Leone, scheduled for August 2000, had to be postponed and hopes that the visit will take place in 2001.

7. By letter dated 27 April 2000, the Special Rapporteur inquired whether the Russian Federation would consider the possibility of inviting her and the Special Rapporteur on torture, to undertake a joint visit to that country with respect to the situation in the Republic of

Chechnya. By letter dated 11 September 2000, the Government addressed an invitation only to the Special Rapporteur to visit Russia, including the North Caucasus region. By letter dated 27 September 2000, the Special Rapporteurs reiterated their request to undertake a joint mission.

8. The Special Rapporteur regrets that the Government has not seen fit to invite both herself and the Special Rapporteur on torture to visit the area of Chechnya, after they specifically requested a joint visit in April.

II. EMERGING LEGAL STANDARDS ON ARMED CONFLICT AND VIOLENCE AGAINST WOMEN

9. Since the Special Rapporteur's last report on violence against women during armed conflict, wartime violence against women has continued unabated. However, in the last few years there has been growing international recognition of the seriousness of these crimes and an international commitment to setting up a mechanism of accountability.

10. As the Special Rapporteur has noted in previous reports, rape and other gender-based violence during wartime has long been prohibited, although often ignored and rarely prosecuted. Only in recent years, following the systematic rape and sexual violence associated with the conflicts in Bosnia and Rwanda, has the international community begun to develop precise legal standards to make clear once and for all that such practices can be war crimes, crimes against humanity, and components of the crime of genocide, as well as torture or other cruel, inhuman and degrading treatment, and enslavement. Similarly, the mechanisms have only recently been created to facilitate the investigation and prosecution of such crimes, through the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda, and more recently the International Criminal Court (ICC).

A. The International Criminal Court

11. The single greatest development since the Special Rapporteur's previous report (hereinafter the "1998 report") was the approval on 17 July 1998 of the Statute of the ICC, known as the Rome Statute. As of November 2000, 116 countries had signed and 23 had ratified the treaty, over one third of the number of ratifications necessary for the treaty to enter into force.

12. The Rome Statute makes explicit that rape and other gender[3] violence are among the most serious crimes of concern to the international community by specifically defining them as constituent acts of crimes against humanity and war crimes. According to the Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Convention (in international armed conflict)[4] or constituting a serious violation of article 3 common to four Geneva Conventions (in a non-international conflict)[5] are war crimes. Similarly, the Statute defines crimes against humanity to include torture, as well as "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" when committed as part of a widespread or systematic attack directed against any civilian population.[6] Furthermore, the Statute defines "enslavement" as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the

exercise of such power in the course of trafficking in persons, in particular women and children".[7] The Statute also provides that persecution on the basis of gender - as well as on political, racial, national, ethnic, cultural, religious or other grounds - may constitute a crime against humanity.[8]

13. Although the Statute does not make specific reference to rape or other sexual violence in its article on genocide, following instead the language in the Convention on the Prevention and Punishment of the Crime of Genocide, its provisions can be used to prosecute rape and other sexual violence (see for example the *Akayesu* case cited below). The Statute provides that constituent acts of genocide include "causing serious bodily or mental harm to members of the group" and "imposing measures intended to prevent births within the group".[9]

14. Also of importance, the treaty includes a non-discrimination clause, which requires that the application and interpretation of the law by the ICC:

> "[M]ust be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender ..."[10]

15. Significantly, the Rome Statute gives specific recognition to the concerns of child soldiers, making the "conscripting or enlisting [of] children under the age of 15 years into the national armed forces or using them to participate actively in hostilities" a war crime.[11]

16. In addition to its substantive legal provisions, the Rome Statute deals with a number of structural issues that women's rights activists viewed as critical if the Court were to function as a progressive mechanism for justice for victims of gender-based violence. In the selection of judges, the States parties must take into account the need for "a fair representation of female and male judges", as well as appoint "judges with legal expertise on specific issues, including ... violence against women or children".[12] The Office of the Prosecutor (OTP) is similarly required to appoint advisers with expertise on "sexual and gender violence and violence against children".[13]

17. The Statute also makes specific provision for a Victim and Witness Unit, which will "provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims and others who are at risk on account of [their] testimony. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence."[14]

18. Although many features of the ICC are sensitive to the issues raised by violence against women during wartime, the Rome Statute also has certain drawbacks with regard to the international human rights of women. The Statute defines "forced pregnancy" in article 7 (2) (f), as requiring the perpetrator to have "the intent" of affecting the ethnic composition of any population. This definition raises serious concerns as to why forced pregnancy of any kind should not be an offence. In addition, it seems to endorse prejudices with regard to ethnic purity by making certain kinds of forced pregnancy more offensive than others.

19. In addition, the Rome Statute defines "gender" in article 7 (3) as referring to "the two sexes, male and female, within the context of society". This definition, by re-emphasizing the biological differentiation between men and women, prevents approaches that rely on the social construction of gender.

20. Finally the Rome Statute does not provide for witness incognito provisions with regard to the defendant once the case goes to trial. Though there are witness incognito provisions in the Statute, the drafters have preferred to place emphasis on the rights of the defendants over the safety of individual witnesses.

B. Case law of the International Criminal Tribunal for the Former Yugoslavia

21. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has played a critical role in setting jurisprudential benchmarks for the prosecution of wartime sexual violence. The Office of the Prosecutor (OTP) has recognized that sexual violence not only constitutes a range of international crimes, such as war crimes, crimes against humanity and war crimes, but can also constitute torture, enslavement, serious bodily injury, and other relevant acts as long as the elements constituting these crimes are present in the act of sexual violence. To date, ICTY public indictments for crimes committed during the war in the former Yugoslavia have charged crimes of sexual assault as grave breaches of the Geneva Conventions, crimes against humanity, war crimes, and genocide. Moreover, the ICTY has publicly charged a number of alleged war criminals with command responsibility for crimes of sexual assault under article 7 (3) of the Statute.

The Tadic case

22. Dusko Tadic, a member of the Bosnian Serb forces operating in the municipality of Prijedor, was convicted by the Tribunal on 7 May 1997 for crimes against humanity and war crimes committed during the war in the former Yugoslavia.[15] Tadic, a low-level official at the notorious Omarska camp, was not convicted for directly committing an act of sexual assault,[16] but for his participation in a general, widespread and systematic campaign of terror that included beatings, torture, sexual assaults, and other physical and psychological abuse directed at the non-Serb population in the Prijedor region.[17]

23. It is particularly significant that in the *Tadic* case the Tribunal found the accused guilty of crimes against humanity for criminal acts of persecution that included crimes of sexual violence. Instead of falling back on the often heard claim that rape is a random or arbitrary act perpetrated by soldiers in search of an outlet for sexual energy, the Tadic decision states categorically that rape and sexual violence can be considered constituent elements of a widespread or systematic campaign of terror against a civilian population. It is not necessary to prove that rape itself was widespread or systematic but that rape was one of perhaps many types of crimes - the *spectrum* of which was committed on a widespread or systematic basis and comprised an aggressor's campaign of terror.[18]

The Blaskic case

24. Tihomir Blaskic, a colonel in the armed forces of the Croatian Defence Council (HVO) and Chief of the Central Bosnia Operative Zone of the HVO armed forces during the events for which he was indicted by the ICTY, was charged with both direct criminal responsibility and command responsibility for crimes against humanity, including rapes committed at detention centres. On 3 March 2000, Blaskic was convicted for a range of humanitarian law violations, including war crimes, grave breaches and crimes against humanity against the Bosnian Muslim population of central Bosnia.[19] He was not convicted for directly committing the crimes enumerated in the indictment but on the basis that he "ordered, planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of those crimes".[20]

25. The judgement is important, among other things for its extended discussion of what constitutes a crime against humanity. The court lists four elements that comprise "a systematic attack", including "the perpetration of a criminal act on a very large scale against a group of civilians or *the repeated and continuous commission of inhuman acts linked to one another*" (emphasis added).[21] The court's discussion of crimes against humanity is a positive contribution to the development of rape as a war crime. Under both the *Tadic* and *Blaskic* interpretations of crimes against humanity, the rape and sexual assault of women need not in and of itself be widespread or systematic but sexual violence can be a constituent element of a widespread or systematic campaign involving other criminal acts.

The Celebici case

26. On 16 November 1998, the ICTY issued its first decision convicting a Bosnian war criminal specifically for crimes of sexual violence, among other war crimes. The court found Hazim Delic, a Bosnian Muslim and deputy camp commander at the Celebici prison camp, guilty of raping and sexually assaulting two Bosnian Serb women held prisoner in the camp in 1992, and convicted him of, among other things, a grave breach (torture) and war crimes (torture) for the rapes.[22] The court also found Zdravko Mucic, a Bosnian Croat camp commander, to have command responsibility for the abuses committed against detainees in the Celebici camp, including killings, torture, sexual assaults, beatings, and other forms of cruel and inhuman treatment.

27. The judgement confirms that rape and sexual violence can be acts of torture; the Trial Chamber underscored that a prohibited purpose of torture is "for discrimination of any kind", including gender discrimination;[23] the court found a camp commander responsible for the sexual violence committed by his subordinates; the court adopted the broad and progressive definition of rape articulated by the *Akayesu* court (see below); and the court emphasized that rape and sexual violence result not only in physical but also psychological harm.

28. Hazim Delic was sentenced to 20 years' imprisonment for crimes committed at the Celebici camp, despite the prosecution's request for a life sentence. Delic was found not guilty for command responsibility for any crimes committed by his subordinates, although he was the deputy camp commander under Mucic and evidence of his de facto control over camp guards is littered throughout the judgement.[24] The prosecution has appealed both Delic's sentence and the verdict. Mucic, Delic and Landzo have all appealed their convictions.

The Furundzija case

29. Anto Furundzija, a local commander in Vitez in a special HVO military police unit, was convicted on 10 December 1998 of torture as a co-perpetrator in the rape of a Bosnian Muslim woman during interrogation, as well as of aiding and abetting in the rape.[25] The case was the first ever prosecuted exclusively on crimes of sexual violence before an international tribunal and contains a number of progressive contributions to the jurisprudence of rape as a war crime. The court confirmed, among other things, the status of rape as a war crime, particularly under common article 3 of the Geneva Conventions dealing with internal armed conflicts;[26] accepted the *Akayesu* definition of rape but formulated a set of elements that expressly prohibits forced oral sex;[27] and stated that the elements of torture in armed conflicts include that at least one of the persons involved in the torture be a public official or from "any other authority-wielding entity",[28] thus opening the door for a range of actors, including paramilitaries and other "irregulars" who raped and sexually assaulted women in the war in the former Yugoslavia with the tacit approval and support of the various militaries, as potential torturers.[29]

30. Unfortunately, the court also made a number of procedural decisions that raise concern. In a controversial ruling, the court subpoenaed records from a women's counselling centre in Bosnia concerning psychological treatment that Witness A. had received in the aftermath of her rapes. After an in camera review to "determine its relevance and whether it should be disclosed to the parties"[30] the Chamber decided that the counselling documents should be disclosed to the defence and the prosecution.[31] Although Furundzija was ultimately convicted, and his conviction upheld on appeal,[32] the procedural decisions taken by the court, particularly with respect to the disclosure of Witness A.'s personal counselling records, must be of concern especially for the possible negative impact on other women coming forward to cooperate with the Tribunal.

The Foca case

31. In June 1996, the ICTY issued an indictment against eight Bosnian Serbs for a range of sexual offences committed against women in Foca.[33] As the ICTY noted, the indictment was of major legal significance because it was "the first time that sexual assaults had been diligently investigated for the purpose of prosecution under the rubric of torture and enslavement as crimes against humanity".[34] The *Foca* case can be distinguished from the *Tadic* and *Blaskic* cases in that the accused are charged with crimes against humanity for a widespread or systematic campaign of sexual violence against women. Thus, rape and sexual assault in and of themselves were systematic, constituting "the perpetration of a criminal act on a very large scale against a group of civilians" required for a charge under crimes against humanity.[35] The trial is currently under way and a judgement is anticipated before the end of the year.

32. The ICTY has indicted a number of individuals for command (or superior) responsibility[36] for crimes of sexual violence. As noted above, in the *Celebici* case, defendants were convicted not because they were physical perpetrators, but because of the rape and sexual violence of those under their command. Others, including Radovan Karadzic, have been indicted for crimes, including rape and sexual violence, committed by those under his leadership.

33. On 27 May 1998, the ICTY indicted a sitting Head of State, Yugoslav President Slobodan Milosevic, then President of Yugoslavia, for violations of the laws or customs of war and crimes against humanity by military and police units operating in Kosovo during the first five months of 1999.[37] Milosevic is charged for his own acts, as well as his superior responsibility. Although the indictment did not include charges related to sexual violence, representatives of the ICTY have stated publicly that they intend "to investigate, and where appropriate indict and prosecute perpetrators" of sexual violence in the province.[38]

C. Case law of the International Criminal Tribunal for Rwanda

34. As of December 2000, the International Criminal Tribunal for Rwanda (ICTR) has publicly indicted 45 persons, of which five indictments include charges of sexual violence. Forty-three accused are in custody either on trial, awaiting trial or serving a sentence.

The Akayesu case

35. The ICTR decision in *Prosecutor v. Akayesu*,[39] issued on 2 September 1998, recognized for the first time that acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign. Jean-Paul Akayesu, then Mayor of Taba commune, was charged with genocide, crimes against humanity, and war crimes[40] and with having known that acts of sexual violence were being committed and having facilitated the commission of such acts by permitting them to be carried out on commune premises.[41] Akayesu was also charged with being present during the commission of crimes of sexual violence and thus of encouraging these crimes.[42]

36. The *Akayesu* judgement is unequivocal in its pronunciation that the crimes of sexual violence committed in the Taba commune and throughout Rwanda constituted acts of genocide:

> "[R]ape and sexual violence ... constitute genocide in the same way as any other act as long as they are committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such ... Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole."[43]

37. The Trial Chamber convicted Akayesu of the crime of genocide finding "beyond a reasonable doubt that the Accused had reason to know and in fact knew that sexual violence was taking place on or near the premises of the *bureau communal* and that women were being taken away from the *bureau communal* and sexually violated. There is no evidence that the Accused took any measures to prevent acts of sexual violence. In fact, there is evidence that the Accused ordered, instigated and otherwise aided and abetted sexual violence."[44]

38. The *Akayesu* court made a significant contribution to the evolving jurisprudence of rape as a war crime by articulating a broad definition that squarely places rape on an equal footing with other crimes against humanity. The *Akayesu* definition reconceptualizes rape as an attack on an individual woman's security of person, not on the abstract notion of virtue and not as a taint on an entire family's or village's honour. Also of significance, the court defined sexual violence to include forced nudity, firmly establishing that acts of sexual violence are not limited to those involving penetration or even sexual contact.[45] The judgement states clearly that

"The Chamber considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts." The "Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances that are coercive."[46] The *Akayesu* definitions of rape and sexual violence have been embraced by the ICTY and have served as the internationally accepted definition for crimes of sexual violence in all of the ICTY cases to date (see *Celebici* and *Furundzija* cases discussed above).

The Musema case

39. On 27 January 2000, the ICTR held that Alfred Musema, director of the Tea Factory in Gisovu, had himself attacked Tutsis, and had incited his employees at the factory to attack Tutsis, during violent attacks in April and May 1994. Musema was also found to have raped a young Tutsi woman named Nyiramusugi, as four other men held her down,[47] then to have left, while the four also raped her and left her for dead. The court held that Musema had individual responsibility both for his own act of rape, as well as for aiding and abetting the other rapists. The court found that the evidence presented - considering both the murders as well as acts of serious bodily and mental harm, including rape and other forms of sexual violence - amounted to genocide. With regard to sexual violence, the court stated: "acts of rape and sexual violence were an integral part of the plan conceived to destroy the Tutsi group. Such acts targeted Tutsi women, in particular, and specifically contributed to their destruction and therefore that of the Tutsi group as such."[48] Significantly, the court also found that "the Accused had knowledge of a widespread or systematic attack on the civilian population. The Chamber finds that the rape of Nyiramusugi by the Accused was consistent with the pattern of this attack and formed a part of this attack", and therefore found Musema guilty of crime against humanity (rape).[49] Musema was sentenced to life imprisonment.

40. In addition to the cases above, a number of cases dealing with sexual violence are currently pending. Arsène Shalom Ntahobali, a local store manager, was indicted along with his mother Pauline Nyiramashuhuko, the former Minister for Women's Development and Family Welfare, on charges of genocide, crimes against humanity and violations of common article 3. He is accused, among other things, of having set up a roadblock where members of the Tutsi ethnic group were kidnapped, abused and killed. Ntahobali is also charged with raping Tutsi women, and both he and his mother are charged with forcing Tutsi women to undress in public.[50] The amended indictment against Laurent Semanza also includes charges of sexual violence; the Prosecutor will present evidence at trial that the accused encouraged paramilitaries to rape Tutsi women. His trial began on 16 October 2000, and is continuing.[51] Similarly, in the amended indictment against Ignace Bagilishema, the bourgmestre of Mabanza from 1980 to 1994, the Prosecutor alleges that the defendant incited Hutus to rape Tutsi women before killing them.[52]

III. FUTURE DIRECTIONS AND UNRESOLVED ISSUES

41. The ICTY has made significant progress in the indictment and prosecution of alleged perpetrators of crimes of sexual violence. However, only a little over half of those publicly indicted are now in custody. Numerous Bosnian women have told international human rights groups that they fear testifying at the ICTY and then returning to their pre-war homes because most of the alleged perpetrators still live in these areas and wield power as politicians, municipal

officials, police officers and businessmen. Efforts must be intensified to arrest those who have been indicted. Similarly, women's rights activists from Rwanda have warned that lack of information about the ICTR and lack of "trust that the court will actually take the measures necessary to protect them from being publicly identified" are reasons that women victims of sexual violence do not come forward to speak to ICTR investigators.[53]

42. The fact that war criminals continue to live freely in close proximity to potential witnesses and that witnesses still fear public exposure has serious implications for the work of the Tribunals and makes the need for aggressive witness protection programmes essential. Particularly during pre- and post-trial phases, there need to be more adequate protective and support measures for witnesses and their families. Long-term protective measures - in the form of resettlement, anonymity, asylum - have been extremely rare and offered only in the most exceptional circumstances. While significant progress has been made on the jurisprudential front with respect to war crimes prosecutions for sexual violence, that progress must be reinforced by a concerted effort to implement witness protection mechanisms that instil confidence and provide personal security for women who want to testify.

43. The ICTY should revise its rules of procedure to include a privilege for medical or rape counselling records that would prohibit their disclosure unless the court is convinced, after in camera review, of the defence's contention that the records are not only relevant but exculpatory.

IV. GENERAL ISSUES RELATING TO VIOLENCE AGAINST WOMEN AND ARMED CONFLICT (1997-2000)

A. Unimaginable brutality

44. Violence against women during wartime continues to involve horrendous crimes that must shock the conscience of humanity. Despite the significant progress that has been made in recent years to strengthen legal prohibitions against rape and other sexual violence, women and girls throughout the world continue to be the victims of unimaginable brutality. As the case studies illustrate, gender-based violence can take a variety of forms. Since 1997, women and girls have been raped - vaginally, anally and orally - sometimes with burning wood, knives or other objects. They have been raped by government forces and non-State actors, by police responsible for their protection, by refugee camp and border guards, by neighbours, local politicians, and sometimes family members under threat of death. They have been maimed or sexually mutilated, and often later killed or left to die. Women have been subjected to humiliating strip searches, forced to parade or dance naked in front of soldiers or in public, and to perform domestic chores while nude.

45. Women and girls have also been abducted or held captive, forced to do domestic work - cleaning, cooking, serving - or other labour, in addition to any sexual "services" that may be demanded of them.[54] Sometimes women and girls are forced into "marriage"; a soldier will identify a woman as his "wife", sometimes forcing her to go with him from region to region and other times passing her on to others; all the while she is raped and otherwise mistreated. Such forced marriages are enslavement as defined by the ICC (see above), and may also be torture or other cruel, inhuman and degrading treatment.

B. Chemical weapons

46. Modern warfare has often entailed the deployment of chemical weapons, the use of which is now clearly banned by the Rome Statute of the ICC. Use of such weapons is a war crime and a crime against humanity. The Special Rapporteur has recently received a number of testimonies of victims of the use of chemical weapons, especially from Viet Nam. The victims have suffered disabilities related to their reproductive organs and have given birth to children with severe disabilities. The consequences resulting from the use of chemical weapons can be devastating, not only for the victim concerned but also for the next generation, unborn at the time of the armed conflict.

C. Role of non-State actors

47. The impunity of non-State actors for violations of human rights and humanitarian law is an issue that deserves serious international consideration. The large majority of conflicts today are internal ones involving armed opposition forces fighting against government units.[55] Although rape and sexual violence are often committed by government forces, non-State actors also commit serious abuses against women and girls and often target the civilian population, including in particular women and children, as a tactic of war. Rebel forces are also responsible for the vast majority of abductions of children, including girls, for sexual slavery and/or to use as child soldiers. In some conflicts, rebel soldiers engage in forced marriage and abduction of young girls living in villages near their camps. The provisions of common article 3 of the Geneva Conventions regulate the conduct of all belligerents to a conflict, including armed opposition forces. Non-State actors, just as government forces, can be held accountable for violations of international humanitarian law and will be subject to the jurisdiction of the ICC, once it is established. There are, however, particular difficulties in enforcing international standards with regard to non-State actors. In particular, there are often limited means of exerting pressure on non-State actors. Additional efforts need to be made in this area to increase pressure on non-State actors to abide by international humanitarian law and to exert political, economic and other pressure on the friendly Governments that finance, arm or otherwise support abusive rebel forces.

D. The female child

48. In recent years, the international community has focused increasing attention on the problem of child soldiers and children in conflict. It is now widely recognized that armed conflict has a different and more damaging long-term impact on children, and that female children may face specific risks that are different from those of boys. As is reflected throughout the case studies below, girls face many if not all of the risks that are experienced by women during armed conflict. They are often victims of rape and other sexual violence, and may be abducted and forced to serve a number of distinct and overlapping roles, such as porters, cooks, combatants and sexual slaves. Girls who are orphaned or separated from their families during armed conflict are also particularly vulnerable to sexual violence and exploitation, including trafficking into forced prostitution. And while they may find themselves responsible for the shelter and feeding of younger siblings, they encounter numerous obstacles that make these tasks difficult because of their age and gender.

49. While women and girls often experience similar types of violence, the physical and mental impact on girls can be much more damaging. Girls who are raped or abducted and forced to provide sexual services for male combatants are at great risk of contracting sexually transmitted diseases, HIV/AIDS, as well as numerous complications related to pregnancy and abortion. This is particularly true for those who are not yet sexually mature. And girls may find it particularly difficult to reintegrate into their families and communities once the conflict is over. The extreme suffering that armed conflict inflicts on girls and the many roles girls are often forced to play during conflict and long after has been recognized by the Secretary-General, in his historic report on children in armed conflict.[56]

50. Girls also participate, either voluntarily or by force, in government armies, paramilitaries and militias, or armed opposition groups in over 30 countries in the world.[57] While these girls often face all of the dangers associated with being a child soldier, they may also be forced to provide sexual services or face other gender-specific abuse. There has been growing international condemnation of the use of child soldiers,[58] culminating, on 25 May 2000, in the adoption by the General Assembly of a new Optional Protocol to the Convention on the Rights of the Child that bans forced recruitment and conscription under the minimum age of 18, and requires States to raise their minimum age for voluntary recruitment to at least 16.[59] By year's end, 70 countries had already signed the treaty and 3 had ratified it.

51. As has been noted above, girls may find it more difficult to reintegrate into their families and communities after the end of a conflict because they have been sexually abused or forced to be wives of enemy forces, and they may face other obstacles to rehabilitation that are both gender and age specific. Girls may, for example, find it difficult to feed and shelter themselves or others because of discrimination in laws, such as inheritance laws. As the Special Representative for Children and Armed Conflict has noted, in post-genocidal Rwanda, an estimated 40,500 households are headed by girls. However, at the time of his visit to Rwanda in February 1999, Rwandese law did not allow women or girls to inherit land, including farm land necessary for their very subsistence.[60] As a result of Special Representative Otunnu's efforts, the Government of Rwanda enacted legislation in March 2000 allowing women and girls to inherit property.[61]

52. Despite the specific needs and experiences of girls in armed conflict, girls are often the last priority when it comes to the distribution of humanitarian aid and their needs are often neglected in the formulation of demobilization and reintegration programmes. There is growing recognition that the specific needs of girls require special protective measures, both during armed conflicts and in post-conflict situations. Following an open debate on 25 August 1999, the Security Council adopted a landmark resolution urging "all parties to armed conflicts to take special measures to protect children, in particular girls, from rape and other forms of sexual abuse and gender-based violence in situations of armed conflict and to take into account the special needs of the girl child throughout armed conflicts and their aftermath, including in the delivery of humanitarian assistance".[62]

E. Trafficking of women in and out of conflict zones

53. During wartime, women are often trafficked across borders to sexually service combatants to the armed conflict. Armed conflict increases the risk of women and girls being abducted and forced into sexual slavery and/or forced prostitution. Although most conflicts are now internal ones, women and girls may be transported across international borders, often to camps of soldiers or rebels located in the territory of a neighbouring State. At least some of these abductions result in women and girls being sold to others and trafficked to other regions or countries. The Governments which host and support the rebel forces also assume a specific obligation to stop the trafficking in human beings and to hold accountable those found responsible for such crimes. The Special Rapporteur has received reports of women being trafficked from refugee camps and other places of shelter given for their protection. She has also received reports of women being trafficked to service United Nations peacekeepers in countries where such peacekeepers are located. The trafficking of women in the context of armed conflict is now seen as a war crime and a crime against humanity. It is important that such trafficking be curtailed, exposed and the perpetrators punished, even if such punishments involve United Nations personnel.

F. Internally displaced women

54. Women and children face rape and other gender-based violence and abduction, not only during armed conflict but in flight, as well as once they have fled the conflict area. In her 1998 report, the Special Rapporteur discussed in detail the particular concerns of refugee women and the factors that impact their security differently from that of men.[63] However, since 1997, the Special Rapporteur has become increasingly concerned with the problem of women who are internally displaced. With the epidemic of internal conflicts around the world, it has become abundantly clear that internally displaced persons (IDPs) - the majority of whom are women and children[64] - are particularly vulnerable to violence and abuse. Unlike refugees, IDPs do not have access to legally binding international standards that are specifically designed for their protection and assistance,[65] nor is there an international monitoring agency specifically mandated to provide protection and assistance to IDPs in the same way that UNHCR does for refugees.

55. There has been growing international recognition of the particular problems of IDPs, culminating in the Guiding Principles on Internal Displacement submitted by Mr. Francis Deng, Representative of the Secretary-General, to the Commission on Human Rights. The Guiding Principles specifically recognize the particular concerns of IDP women and children, call for IDP women to be included in all phases of planning and distribution of humanitarian assistance, and for IDPs to be protected from all forms of violence including rape and other gender-specific violence, including forced prostitution.[66] Although essentially a restatement of existing international human rights and international humanitarian law, the Guiding Principles represent a significant achievement. Nevertheless, many IDPs still do not have access to humanitarian assistance or international protection. Although a State is obliged to protect its citizens, it is often the perpetrator of the very violence that causes displacement as well as the obstacle to international efforts to protect and provide humanitarian assistance to IDPs. Women and children, who make up the vast majority of IDPs, cannot hope to have adequate protection and

assistance until States abide by their obligations under international human rights and humanitarian law pertaining to IDPs, and the international community develops a more consistent and coherent protection-oriented response to the problem of internal displacement.[67]

56. There has been growing recognition that the failure to include women in the design and construction of refugee camps, as well as in decisions about the distribution of humanitarian assistance, has unwittingly placed refugee women in ongoing danger. Recent calls for the mainstreaming of a gender perspective in all aspects of conflict and post-conflict responses, including in the design and construction of shelter and programmes for the distribution of humanitarian assistance, apply with equal force to the internally displaced.

G. Militarization

57. Evidence from around the world seems to suggest that armed conflict in a region leads to an increased tolerance of violence in the society. A growing body of evidence indicates that the militarization process, including the ready availability of small weapons, that occurs leading up to and during conflicts, as well as the process of demobilization of often frustrated and aggressive soldiers after a conflict, may also result in increased violence against women and girls. When a peace agreement has been reached and the conflict brought to an end, women often face an escalation in certain gender-based violence, including domestic violence, rape, and trafficking into forced prostitution.[68] The correlation between domestic violence and violence during war has concerned many scholars and activists in conflict-ridden areas. A report on violence against women in the IDP/refugee camps in West Timor shows very high incidence of domestic violence and sexual harassment in the camps.[69] Unfortunately many of the peace agreements and the processes of reconstruction after the conflict do not take note of these considerations.

H. United Nations peacekeepers/military bases

58. Women may also be exposed to violence by the international authorities or forces assigned to protect them. There have been a growing number of reports of rape and other sexual abuse being committed by United Nations peacekeeping forces and staff, most notably the 1999 murder of an 11-year-old Albanian girl in Kosovo by an American soldier.[70] Similarly, although clearing the Italian army of widespread abuse during its 1992-1995 peacekeeping operation in Somalia, an Italian investigative commission did conclude that the peacekeepers had committed abuses, such as the rape of a Somali woman with a stick of explosives. Reports of torture, rape and murder or other serious abuses by peacekeeping units have also been reported in Mozambique, Angola, Cambodia and Bosnia.

59. Some commentators have also noted that military contractors linked to peacekeeping forces and United Nations Police typically increase the demand for prostitution and may even participate in the trafficking of women into forced prostitution. A report prepared by the High Commissioner for Human Rights and the United Nations Mission to Bosnia and Herzegovina (UNMIBH) found widespread complicity by local police, as well as by some international police

and members of the Stabilization Force (SFOR), in the trafficking of women into Bosnia.[71] The report discussed one case in which an SFOR civilian paid 7,000 deutsche mark (US$ 3,057) to purchase two women from a brothel owner and notes that "NATO declined to waive the SFOR member's diplomatic immunity; he left Bosnia without legal repercussions."[72]

60. The problem of abuse in children by peacekeepers has been recognized by, among others, Graça Machel. In her September 2000 report on the impact of armed conflict on children, Ms. Machel stated that "the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution. These and other acts of violence committed by peacekeeping personnel against women and children are rarely reported or investigated. Even though the United Nations has taken some action to control the behaviour of peacekeeping personnel, it is still relatively rare for disciplinary measures to be taken."[73]

61. Women in Japan (Okinawa), the Philippines and the Republic of Korea have also expressed concern that United States military bases and forces present in their countries create increased risk of rape and other sexual violence.[74] On 8 November 2000, for example, a United States soldier was sentenced by the Seoul High Court to six years in prison for the strangling death of a 31-year-old waitress who refused to have sex with him.[75] The presence of army bases near civilian populations increases risks of certain kinds of violence. It is important that the host Government and the Government in command of the armed forces take the necessary precautions to prevent such violence and act speedily to prosecute and punish the perpetrator once the violence is committed.

62. Peacekeeping forces and international police are often not sufficiently responsive to women's protection needs or fail to make it a priority to solve rape and other crimes of sexual violence, thereby perpetuating an atmosphere of impunity in areas under their control. In recognition of this problem, on 17 September 1999, the Security Council adopted a resolution in which it noted "the importance of including in the mandates of peacemaking, peacekeeping and peace-building operations special protection and assistance provisions for groups requiring particular attention, including women and children", and requested the Secretary-General to ensure that United Nations personnel involved in such activities "have appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions ...".[76] Furthermore, there is growing recognition that greater efforts must be made to place women in peacekeeping and civilian police units, and to ensure that a senior staff person is assigned specific responsibility for gender-based violence.

I. Reconstruction programmes

63. Women also often face violence, discrimination and indifference to their needs in the rehabilitation and reconstruction process, ensuring that their security and subsistence concerns will go unanswered. Although in post-conflict situations the majority of heads of households are often women, women face discrimination at every turn in trying to feed and house their families, and their needs are rarely adequately factored into international donor and reconstruction programmes, or the distribution of humanitarian aid. Women in Rwanda were hindered in their efforts to feed and shelter their families by discriminatory inheritance laws that have only recently been changed. What is more, reconstruction programmes often ignore the special needs of these female-headed households, directing their attention and resources to work projects for

the male population. The absence of adequate attention to the special problems that female heads of household, many of them war widows or orphaned, face in trying to feed their families, the failure to take these concerns into account in the distribution of humanitarian assistance, and the lack of initiatives by the donor community to support work projects that specifically include women compound historical discrimination in many societies and can ultimately force women to turn to prostitution as the only means of supporting their family.

J. Women in the peace process

64. In recent times, women's groups have pointed to the lack of involvement of women at the highest levels of most peace processes. Many post-conflict concerns can only be addressed if women have a greater role in the peace process, during which time the framework for future government structures and administration are set in place. The Security Council has recently reaffirmed the "important role of women in the prevention and resolution of conflicts and in peace-building", and has stressed "the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security ...".[77] It is incumbent upon the international community to insist on the full participation of women to ensure that any peace agreement and post-conflict structure reflects the specific experiences of women and girls, and that special steps are taken to address their specific concerns.[78] In this regard, it is important to note and place on record the important role played by women's groups in the Northern Ireland and Sierra Leone peace processes. Women's groups in Burundi, Sri Lanka and Jerusalem have also been very active in struggling for peace and reconciliation.

K. Accountability/truth and reconciliation

65. Because women and girls have different experiences during armed conflict, often suffering violence and other abuse that is specific to their gender, it is evident that women must be fully involved in society's efforts to address the past. Without a gender-sensitive approach and a conscious effort to bring women into the process women's voices and experiences are often lost. This was the experience of the South African Truth and Reconciliation Commission (TRC), for example, which found that women often viewed themselves as the "wives, mothers, sisters and daughters of the active (mainly male) players on the public political stage" and downplayed or remained silent about their own suffering.[79] Women were particularly likely to remain silent about the sexual violence they had experienced. Owing to strong advocacy by women's and human rights groups, the TRC decided to take special steps to encourage women to testify, including by holding three special women's hearings in Cape Town, Durban and Johannesburg.[80] "These hearings brought to light the particularly gendered ways in which women experienced human rights violations and furthered the process by which the commissioners distinguished less and less between what were originally perceived as primary and secondary victims."[81]

L. Impunity/accountability

66. The failure to investigate, prosecute and punish those found responsible for rape and sexual violence has contributed to an environment of impunity that perpetuates violence against women today. One can only hope that, with regard to rape and other sexual violence, the important work of the ICTY and ICTR, as well as the relevant language in the Rome Statute of

the ICC, indicate an end to international tolerance for violence against women. However, the failure to enforce international humanitarian law and to hold accountable those who violate it has not been and is not now primarily a problem of legal definitions and sufficient legal precedent. It will ultimately depend on the firm commitment of the States Members of the United Nations whether the violence described below is investigated and punished, and whether future such acts are prevented.

V. CASES OF VIOLENCE AGAINST WOMEN IN TIMES OF ARMED CONFLICT (1997-2000)

67. The following are cases of violence against women during times of armed conflict as reported by independent fact finders; their stories have been corroborated by more than one source. The list is neither exhaustive nor representative, but it serves to point to the nature and degree of violence perpetrated against women during times of armed conflict. Some of the case studies were given to the Special Rapporteur in direct testimony, some from official sources including multilateral and international agencies, others are drawn from the reporting of international non-governmental human rights organizations that have been independently corroborated.

A. Afghanistan

68. The Taliban continues severely to restrict the rights of women throughout the territory under its control (an estimated 90 per cent of the country). During her September 1999 visit to Afghanistan, the Special Rapporteur found that "in Taliban-controlled areas of Afghanistan, discrimination against women is officially sanctioned and pervades every aspect of the lives of women. They are subject to grave indignities in the areas of physical security and the rights to education, health, freedom of movement and freedom of association."[82]

69. Women are reportedly subjected to a wide range of human rights abuses, including instances of rape, sexual assault, forced prostitution and forced marriage. During the Taliban's August 1998 capture of Mazar-I-Sharif in north-western Afghanistan, there were reports that "young women were abducted by the Taliban from a number of neighbourhoods in Mazar-I-Sharif and that their whereabouts were unknown. While such abductions do not appear to have been widespread, certain neighbourhoods appear to have been targeted."[83] Similarly, during a new round of fighting in mid-1999 in the Shamali Plains, as well as in renewed fighting in mid-2000, there were reports that Taliban abducted and raped women. The Special Rapporteur on the situation of human rights in Afghanistan has also received reports that "many Hazara and Tajik women and girls were abducted in the villages and taken directly from houses by force".[84] Although it has been extremely difficult to confirm these reports through eyewitness or victim testimonies, they are of a serious nature requiring further independent investigation.[85]

70. The Special Rapporteur on the situation of human rights in Afghanistan also received many reports of the families of young girls and women being forced "to conclude a Nikah (marriage contract) and thus marry them to Taliban members or to give them a large sum of money instead. When families refuse, they take the women and girls away by force".[86]

71. The Special Rapporteur also noted the "rise in violence against women among the refugee population, including child abuse, prostitution and trafficking".[87] She has received a number of reports of sexual abuse of Afghan refugee women and girls, including in the Pakistani village of Saranan, situated 106 km from Quetta, as well as in Surkhab, G. Minera and Pir Alizi.

B. Burundi

72. Despite a peace agreement in late October 1999, all sides to the conflict in Burundi continued to commit serious violations of humanitarian and human rights law: in the last year over 1,000 civilians were massacred and "thousands more maimed, raped, or otherwise injured".[88] Civilians were collected into so-called "regroupment camps" around the capital. In some camps, where soldiers were charged with protecting the residents, soldiers raped and coerced sexual favours from women and girls.[89] Because of increased international pressure demanding the closure of the camps, the Government of Burundi has dismantled the regroupment camps in Bujumbura and ceased using regroupment as a counter-insurgency tactic in the countryside. Although the situation for women and girls has much improved in the provinces where regroupment was practised, they still remain vulnerable to violence by soldiers and rebels.

73. Many women who fled the country have been confronted with more violence in the refugee camps in the United Republic of Tanzania. Women living in the camps have been subjected to extremely high levels of sexual and domestic violence by other refugees and/or men living near the refugee camps.[90] Growing tensions between the refugee population and the local Tanzanians in the region have also led to women's increased vulnerability. "In one particularly serious incident in May 1999, a group of some 50 refugee women were alleged to have been raped by a group of Tanzanian men [in Kasulu district], apparently in reprisal for the death of a local schoolteacher. More than a hundred Tanzanian men were believed to have taken part in the rapes, though only eleven were subsequently arrested."[91]

C. Colombia

74. There have been a number of reports of rape and sexual abuse, especially by paramilitary groups linked to Colombia's armed forces. For example, on 18 February, some 300 armed men belonging to the paramilitary Peasant Self-Defence Force of Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá, ACCU) set up a kangaroo court in the village of El Salado, Bolívar. For the next two days, they tortured, garrotted, stabbed, decapitated and shot residents. Witnesses told investigators that they tied one six-year-old girl to a pole and suffocated her with a plastic bag. One woman was reportedly gang-raped. Authorities later confirmed 36 dead. Thirty other villagers were missing.[92] Similarly, paramilitaries who entered the village of Pueblo Nuevo Mejia on 2 June 2000 abducted Andis Villalobos Galán and her son when they were unable to find her husband and brother-in-law. International human rights groups reported that Andis Villalobos had been forced to cook for the paramilitaries, ill-treated and threatened with sexual abuse.[93]

75. Guerrilla forces have also reportedly been responsible for widespread abuses during the armed conflict. In the town of Barrancabermeja, guerrilla forces and groups linked to them have been responsible for numerous deliberate and arbitrary executions of people they consider to be military or paramilitary collaborators or sympathizers, including young women associating with members of the security forces.[94]

D. Democratic Republic of the Congo

76. All of the armed forces[95] fighting in the three-year war in the Democratic Republic of the Congo have committed serious abuses against women and frequently targeted women for rape and other sexual violence. Armed groups, in particular Hutu rebels, have used rape systematically against civilians. Some women and girls are held as sexual slaves. There have also been reports that detained men, women and children have been subjected to sexual violence.

77. The Special Rapporteur received reports of dozens of cases of rape and other human rights violations against women in areas controlled by the Goma-based Congolese Rally for Democracy (Rassemblement congolais pour la démocratie, RCD) and its Rwandan allies. In one particularly gruesome incident, in September 1999, RCD soldiers reportedly beat, stripped and raped five women in the village of Mwenga who had been detained reportedly because an RCD soldier's wife accused them of sorcery. The soldiers then put hot pepper in the women's vaginas, put them in a pit and buried them alive.[96] Between April and July 1999, 115 rapes by combatants were registered in just the two regions of Katana and Kalehe in South Kivu. Thirty rapes were reported during the 5 April 1999 attack on Bulindi and Maitu.[97] Since April 2000, over 40 women have been held hostage by Mai Mai armed groups in Shabunda, South Kivu, and are believed to be at great risk of sexual violence.

78. The Special Rapporteur on the human rights situation in the Democratic Republic of the Congo also reported that he had received many reports that rape, even of girls, still occurs in prisons and during military operations in the country. The Special Rapporteur noted specific charges of rape by Congolese Armed Forces soldiers as they fled from Equateur in the beginning of 1999.[98] He also received reports of rape of women in Kabamba, Katana, Lwege, Karinsimbi and Kalehe, and by Ugandan soldiers in towns in Orientale province.[99]

E. East Timor

79. Militia forces backed and trained by the Indonesian military carried out a systematic campaign of violence during the lead-up to the August 1999 referendum on East Timorese independence, which was organized and administered by the United Nations. When East Timorese nevertheless opted for independence from Indonesia, pro-Indonesian militia and Indonesian soldiers initiated a scorched earth policy, terrorizing the population and committing widespread abuses, including the rape of women and girls. Some women were also reportedly held in sexual slavery.[100]

80. The Special Rapporteur, during a joint fact-finding mission in November 1999 together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, found evidence of widespread violence against women in

East Timor during the period [from January 1999] ... the highest level of the military command in East Timor knew, or had reason to know, that there was widespread violence against women in East Timor.[101]

81. After the violence ended and the United Nations Transitional Administration in East Timor (UNTAET) was in place, several initiatives were begun to investigate and hold accountable those responsible for the most serious abuses committed during the violence. Numerous obstacles, including lack of proper training and absence of appropriate infrastructure, caused significant delays in the UNTAET investigations. This was particularly true for investigations into rape cases.[102] The International Commission of Inquiry appointed by the Secretary-General pursuant to Commission resolution S-4/1 adopted at its special session on East Timor, found a pattern of serious violations in East Timor after January 1999, including sexual abuse, rape, stripping and sexual slavery of women, noted the need for further investigations and called on the United Nations to establish an independent and international body charged with conducting systematic investigations, identifying and prosecuting perpetrators, and ensuring reparations to victims of the violence in East Timor.[103]

F. Federal Republic of Yugoslavia (Kosovo)

82. There were many credible reports of rape and sexual violence against Kosovar women during the armed conflict between Yugoslav armed forces and the Kosovo Liberation Army (KLA) in early 1998, and especially during the period from March to June 1999, when the NATO bombing campaign against Yugoslavia was under way.[104] During that period, Serb paramilitaries reportedly dragged women and girls out of their homes, off buses, or from other public areas. Many women were raped, some were held in sexual slavery, and an unknown number were killed. Others were forced to undress and subject themselves to humiliating searches, or were threatened with rape or death if they did not pay money. Serbian paramilitaries committed the large majority of sexual assaults that took place in Kosovo during this period, but there were also a number of reports of rape by regular Serb soldiers.[105] Many of the rapes were by multiple perpetrators and there were also numerous reports of victims having been covered with bites.

The case of V.B.

83. A group of 27 women and children were held for days by soldiers believed to have been from the Yugoslav army. Women reported being stripped of their clothes, of being sexually abused, and of some being taken out one at a time and raped. Six young women were reportedly raped repeatedly. On one final occasion, the six young women and three older women were all taken out. Only one of the nine, in fact, survived; the remains of the others were discovered three months later in a well located on the property.[106]

84. After the NATO-led international security force in Kosovo (KFOR) entered Kosovo in June 1999, ethnic Albanians displaced by the war began to return in droves. Rape of ethnic Serbs, Roma and Albanians perceived as having supported the Government of Yugoslavia were reported during this period.[107] The European Roma Rights Center (ERRC) documented three cases of rape of Roma women by persons in KLA uniform.[108]

G. India

85. Rape and sexual abuse have been reported in areas where there are armed conflicts in India such as Jammu, Kashmir, Assam and Manipur, among other regions. Torture, including rape and other sexual violence, is also reportedly used by the police and security forces. In certain reports that the Special Rapporteur has received with regard to custodial violence outside the armed conflict areas, women from certain castes and ethnic or religious minorities appear to be at risk of being targeted by the police.[109]

86. As fighting escalated in Jammu and Kashmir, all parties to the conflict committed serious abuses against the civilian population. The Special Rapporteur has received reports that the Indian security forces have raped women and girls in certain search operations. The following cases were highlighted during this period.

Case of S.

87. On 5 October 1998, the Eighth Rashtriya Rifles took S., a woman from Ludna, Doda, her husband, and grandson from their house to the military base in Charote. There, it is reported that the soldiers tortured the woman with electric shocks, stripped off her clothes, and the captain raped her.[110]

Case of 14-year-old Gulshan

88. "In the night of 22 to 23 April 1997, during a raid of Wavoosa village near Srinagar, at least four security personnel are said to have raped 14-year-old Gulshan, her 15-year-old sister Kilsuma and her 16-year-old sister Rifat. In a neighbouring house they raped 17-year-old Naza and at least three adult women. Army and civilian authorities made inquiries into the incident but no steps appear to have been taken to bring those responsible to justice."[111]

H. Indonesia/West Timor

89. Mob violence directed primarily against ethnic Chinese citizens of Indonesia erupted on 13 May 1998, following the shooting death of four students by army or police officers the day before. Indonesian security forces reportedly stood by over the course of the next three days as mobs killed an estimated 1,198 persons, torched houses and businesses, and sexually assaulted Chinese women. Although there has been controversy over the exact number of victims raped during the violence, there is little doubt that many ethnic Chinese women were subjected to sexual violence during this period. Following her mission to Indonesia in November 1998, the Special Rapporteur concluded that "[a]lthough she [could not] provide a definite number, the pattern of violence that was described by victims, witnesses and human rights defenders clearly indicted that such rape was widespread".[112]

90. Over one year after violence erupted in East Timor (see East Timor, above), over 100,000 East Timorese refugees remain in West Timor, most under pro-Indonesian militia control, where violence, including sexual assault, by militia is common. There have also been numerous, credible reports that women are used as forced labourers and sex slaves. "According to refugees who have returned from West Timor, women are regularly taken from the camps and

raped by soldiers and militia members. An Indonesian soldier reportedly held a number of refugee women captive in his house. One of the women said to have been held there was Filomena Barbosa", a prominent activist in the pro-independence campaign in East Timor.[113] The Government of Indonesia has failed to disarm and disband the militia, or to investigate reports of sexual assault and hold the perpetrators accountable.

91 Rape has also been reported during armed conflicts in other areas of Indonesia as well, including in Irian Jaya and Aceh. For example, in March 2000, women were reportedly raped in the village of Alue Lhok in the North Aceh district.[114]

I. Japan: developments with regard to justice for comfort women

92. Although the Government of Japan has acknowledged moral responsibility for the system of organizing sexual slaves euphemistically called "comfort women" during the Second World War, it has refused to accept legal liability or to pay compensation to the victims.[115] There has been no attempt to implement the set of recommendations the Special Rapporteur made in her 1996 report,[116] or those outlined by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights in the appendix to her final report on systematic rape, sexual slavery and slavery-like practices during armed conflict.[117]

93. According to the December 2000 report of The Asian Women's Fund, the private fund set up to compensate the victims and to carry out projects to assist them, the project of atonement from the Japanese people involves recipients receiving a letter from the Prime Minister of Japan expressing apology and remorse and compensation of 2 million yen. To date 170 former comfort women have received atonement money. In addition, the Fund conducts many other laudable activities to assist women and elderly people affected by the Second World War and violence against women.

94. In recent years, several of the victims of sexual slavery have brought lawsuits in Japanese courts; a number of these cases are still pending. Of those that have been decided, the results are decidedly mixed. Three "comfort women" were each awarded 300,000 yen (US$ 2,300) by the Shimonoseki Branch of the Yamaguchi District Court on 27 April 1998, after the court found that the women had been held in sexual slavery and that their human rights had been violated. The court essentially held that there was a legal obligation for the Government of Japan to compensate the women, holding that the failure of the Diet to pass legislation compensating the women for their suffering "constituted a violation of Japanese constitutional and statutory law".[118] Both the plaintiffs and the Government filed an appeal at the Hiroshima Higher Court, which is currently pending.

95. By contrast, the Tokyo District Court rejected the lawsuit of 46 former "comfort women" from the Philippines on 9 October 1998,[119] as well as the claim of a Dutch former "comfort woman" on 30 November 1998.[120] An appeal filed by the plaintiffs in the Filipino women's case was rejected by the Tokyo Higher Court on 6 December 2000. An appeal in the case of the Dutch woman is pending before the Tokyo Higher Court. Similarly, the Japanese High Court of Justice rejected the appeal of a former Korean "comfort woman" on 30 November 2000, acknowledging her suffering but ruling that she - as an individual - did not have the right under international law to bring an action against a State for compensation. The Court also held that

the statute of limitations for Koreans living in Japan to claim compensation for war damages ended in 1985.[121] In September 2000, a group of 15 former "comfort women" filed a class action suit in the Washington District Court demanding compensation for the crimes committed against them.[122]

96. In December 2000, women's groups held a Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (Tokyo Tribunal 2000), to highlight the ongoing denial of compensation to the victims of Japan's system of "comfort women" by the Government and the impunity that continues for its perpetrators. Evidence from "comfort women" living in the two Koreas, the Philippines, Indonesia, East Timor, China and the Netherlands were gathered in detail and were now finally available as a matter of record. The evidence was presented by an international prosecutor before an eminent panel of international judges. The findings of the judges to the Tribunal reiterated the legal liability of the Government of Japan and the need to set up a process to punish the perpetrators of the crimes. The Government was, however, not represented at the Tribunal.

J. Myanmar

97. The rape and sexual abuse of women and girls by government forces has been "a regular feature in the mode of operation of the army in its campaign of incursions into the insurgency zones or else in the relocation sites".[123] The Special Rapporteur has received many credible reports of women and girls being raped and sexually abused or threatened with abuse by government troops to intimidate the local population, to extract information from female detainees, and to extract bribes. Women and girls have also been abducted, used as forced labour and forced into "marriages".

Case of Nang Zarm Hawm

98. Nang Zarm Hawm, a 14-year-old girl, was reportedly raped and burned alive at a farm about 3-4 miles east of Lai-Kha on 11 May 1998. On that day, a Maj. Myint Than and approximately 90 troops went to a rice farm where Nang Zarm Hawm and her parents had been working. At the time they arrived, Nang Zarm Hawm was alone. "Myint Than asked her about her parents and ordered his soldiers to wait at the edge of the farm and arrest anyone who came to the farm. He then raped Nang Zarm Hawm in the hut several times during the day and at about 4 a.m. burned Nang Zarm Hawm in the hut, and left the place with his troops".[124]

Violence in Ta Hpo Hkee

99. The Special Rapporteur on the situation of human rights in Myanmar received information that, "on 31 July 1999, a group of 43 soldiers led by company commander Mo Kyaw and his assistant, Ka Htay, from Fourth Company, Infantry Battalion 101, went to Ta Hpo Hkee, a village near the Kawei and Hpway Plaw massacre sites, where they captured a group of seven Karen civilians, including a nine-year-old girl and a pregnant woman, and killed them. Both single women and the nine-year-old girl were reported to have been gang-raped by the soldiers before they were slaughtered. The pregnant woman was killed by a shot fired at the abdominal region".[125]

K. The Russian Federation (Chechnya)

100. In renewed fighting in Chechnya in late 1999 and throughout 2000, both Russian government forces and Chechen rebels committed humanitarian law violations, but Russian forces committed the vast majority of the violations. Russian soldiers brutally tortured, beat and raped women, as well as some men, in the areas under their control. Sexual violence was particularly prevalent during so-called "mop up" operations, when Russian soldiers entered towns and villages for the first time after the rebel fighters had fled. There were reports of rape in Alkhan Yurt, Novye Aldy, Shali, and Tagi Chu.[126] The following are but two of the many accounts.

The Case of "Fira"

101. Russian soldiers reportedly raped and killed 23-year-old "Fira" (not her real name) and her mother-in-law on 19 December 1999, after capturing the town of Shali. Fira was approximately six months' pregnant at the time of her death. Neighbours heard screams and gunshots coming from the house and later discovered the bodies of the two women. One neighbour, "Malika" (not her real name), saw the victims bodies:

> "On her breasts, there were dark blue bruises. There was a strangely square bruise on her shoulder. Near her liver, there were also dark bruises. On her neck, there were teeth marks, and her lips also had teeth marks, like someone had bitten her. She had a little [bullet] hole on the right side of her head, and a big wound on the left side of her head."[127]

The case of X. and three other women

102. On 5 February 2000, four women were seized by Russian soldiers who came to their houses in the upper part of Aldi, a suburb of the capital, Grozny. There were 12 soldiers and "many" of them reportedly raped the women, some both vaginally and orally. One woman allegedly suffocated to death when a soldier sat on her head. Two other victims were strangled when they screamed. A fourth woman lost consciousness when she was orally raped.[128]

103. Despite strong evidence of rape and other sexual violence committed by Russian forces in Chechnya, the Government of the Russian Federation has failed to conduct the necessary investigations or to hold anyone accountable for the vast majority of cases. To date, only one of the alleged perpetrators, a Russian tank commander, has been arrested and charged with sexual assault.

L. Sierra Leone

104. Systematic and widespread rape and other sexual violence has been a hallmark of the nine-year conflict in Sierra Leone. Thousands of cases of sexual violence have been reported, including individual and gang rapes, sexual assault with objects such as firewood, umbrellas and sticks, and sexual slavery.[129] During the January 1999 rebel offensive against Freetown by

the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC), there were hundreds of reports of women and girls being rounded up and brutally raped. "A 14-year-old girl was stabbed in the vagina with a knife because she had refused to have sex with the rebel combatant who abducted her. Another women had small pieces of burning firewood put into her vagina. One 16-year-old girl was so badly injured after repeated rape that, following her escape, she required a hysterectomy."[130] The rebel forces also abducted several thousand civilians from Freetown during this period. Of those women and girls who were abducted, "more than 90 per cent ... were believed to have been raped: many were forced to submit to rape or be killed. Many girls subsequently released were pregnant, had given birth or had contracted sexually transmitted diseases".[131]

105. The Lomé Peace Accord, which was signed on 7 July 1999, brought about a relative reduction in many of the worst abuses, except for sexual assault against women and girls, which continued unabated. As the peace process collapsed and fighting escalated once again in May 2000, all sides in the conflict - the RUF and rebel militias, and increasingly pro-Government forces - committed horrific crimes against the civilian population, including systematic and widespread sexual assault, rape and mutilation of women.

106. Many of the rapes took place when victims were abducted and forced to become sexual partners or "wives" of their captors. Girls, some as young as 10 years old, were abducted by rebel forces and forced to be sexual slaves.[132]

107. The Lomé Peace Accord granted a general amnesty for all crimes committed during the conflict, including sexual violence. The Special Representatives of the Secretary-General added a reservation to the peace agreement indicating that the United Nations did not recognize the amnesty as applicable to crimes of genocide, crimes against humanity, war crimes and other serious violations of human rights and humanitarian law. On 14 August 2000, the Security Council adopted resolution 1315 (2000) in which it requested the Secretary-General "to negotiate an agreement with the Government of Sierra Leone to create an independent special court" and recommended "that the subject matter jurisdiction of the court should include notably crimes against humanity, war crimes and other serious violations of international humanitarian law ...". On 5 October 2000, the Secretary-General submitted a report with recommendations and proposals for the establishment of the Special Court (S/2000/915), which was at this writing under consideration by the Security Council.[133]

108. Having suffered unbelievably at the hands of armed groups in their home country, refugees from Sierra Leone (as well as from Liberia) who sought refuge in Guinea have also been victims of violence. Following a statement by the President of Guinea in September 2000 blaming refugees for sheltering armed rebels who had allegedly carried out attacks on Guinea from Sierra Leone and Liberia, mobs attacked thousands of refugees in the capital, Conakry. Many refugees were forced out of their homes and beaten. There were also credible reports of rape and sexual abuse of women and girl refugees by Guinean police, soldiers and civilians, many by multiple attackers. Non-governmental organizations collected numerous testimonies of victims, including that of a 14-year-old girl and a mother with a three-month-old baby, both of whom had been brutally raped.[134]

M. Sri Lanka

109. The Sri Lankan security forces have continued to commit serious human rights abuses, including sexual violence, in the context of the 17-year armed conflict against the Liberation Tigers of Tamil Eelam (LLTE). Sri Lankan police have also reportedly committed rape and other sexual abuse in the course of the fighting. Following are some of the cases that have been received since 1997.

Case of Sarathambal Saravanbavananthatkurukal

110. Twenty-nine-year old Sarathambal Saravanbavananthatkurukal, a daughter of a temple priest, was reportedly gang-raped and murdered by members of the Sri Lankan navy on 29 December 1999 in Pungudutivu, near Jaffna. Despite orders from the President to investigate the case, to date no one has been held accountable.

Case of Ida Caremelitta

111. "Ida Caremelitta was allegedly gang-raped by five soldiers and then killed during the night of 12 July 1999 in Pallimunai village on Mannar Island. Five masked and heavily armed men reportedly entered the house where she and her family were sleeping, took Ms. Caremelitta outside and violently raped and then killed her. The post mortem report indicates that Ms. Caremelitta had been repeatedly raped and that her body had been sexually mutilated."[135] The Government is proceeding with the investigations and a case has been filed against some of the soldiers.

112. In addition to the security forces, certain armed groups are allowed to operate with considerable impunity in the north and the east as they are allies of the Government in the conduct of the war. In the Eastern Province and the Vauniya district, there are allegations of rape and extrajudicial killings being conducted by these groups. The case of Noor Lebai Sithi Umma in Eravur, a 28-year-old girl who was raped and murdered allegedly by an armed group, is a case in point. Another case reported to the Special Rapporteur involved Ali Muhammath Athabia from Eravur, who was tortured and sexually assaulted in front of her daughters by members of an armed group.

113. LLTE are also responsible for committing serious human rights abuses in conducting the war. In addition, the Special Rapporteur has received reports that they routinely recruit and sometimes abduct children, including girls, for use as child soldiers. In a report from July 2000, an organization called The University Teachers for Human Rights reported that 20 girls had recently been recruited by the LLTE from a school. Five of the girls - aged 14 and 15 - told the camp officials that they did not want to stay. According to the report, "These girls were then isolated, taken to a room, stripped, mercilessly assaulted and pushed onto the ground. They were then trampled on."[136]

VI. RECOMMENDATIONS

A. International

114. Following on the recommendations contained in the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations, as well as numerous statements, resolutions and decisions by the United Nations, the Organization should take immediate steps to ensure that the representation of women is increased in all institutions of the United Nations and at all levels of decision-making, including as military observers, police, peacekeepers, human rights and humanitarian personnel in United Nations field-base operations, and as special representatives and envoys of the Secretary-General. Important measures should include:

(a) The creation of a Gender Unit and the appointment of senior gender advisers within the Department for Peacekeeping Operations, as well as the appointment of senior gender advisers and child protection advisers with gender-sensitive training to all field missions;

(b) An increase in the number of women appointed as special representatives to conflict areas, in key posts responsible for peacekeeping missions and the distribution of humanitarian assistance;

(c) The inclusion of gender advisers in the Integrated Mission Task Forces proposed in the report of the Panel on United Nations Peace Operations (the Brahimi report) (A/55/305-S/2000/809).

115. The Organization should take concrete steps to mainstream a gender perspective in all United Nations activities, most urgently in those areas that affect the physical security of women and girls, including in field operations, in peacekeeping, and in military and police forces. Not only will gender mainstreaming ensure greater participation of women in the key operations of the organization, it will improve the responsiveness of the United Nations to the special concerns of women and girls that are outlined in this report. These steps should include:

(a) The establishment of a clear mandate for all peacekeeping missions to prevent, monitor and report on violence against women and girls, including all sexual violence, abduction, forced prostitution and trafficking;

(b) The establishment of comprehensive training on gender issues for all peacekeeping staff in the field, as well as staff of the Department for Peacekeeping Operations based in New York;

(c) The elaboration of uniform procedures and disciplinary measures for peacekeeping personnel who violate international standards, in particular those related to violence against women and girls. Special ad hoc tribunals to try peacekeepers for war crimes and crimes against humanity should also be considered in the areas where peacekeepers operate.

116. The Organization should take specific steps to ensure that peacekeeping personnel who commit abuses in violation of human rights and humanitarian law, including those against women and girls, are held accountable. Member States who contribute troops to peacekeeping operations should not only abide by a code of conduct, but should investigate all allegations of such violations and prosecute those found responsible. All such investigations and their outcome should be made public, including in regular reports to the Secretary-General. Following on the recommendation by Graça Machel in her September 2000 report on children in armed conflict, the Special Rapporteur also urges that an ombudsperson or other disciplinary and oversight mechanism be created within all peace support operations.

117. The United Nations should ensure that women are represented in all ceasefire and peace negotiations, and that gender issues are an integral part of these processes. Special efforts should be made to engage local women's NGOs in the peace negotiations.

118. The wartime experiences and post-conflict needs of women and girls must be fully taken into account in the formulation of repatriation and resettlement plans, as well as demobilization, rehabilitation, reintegration and post-conflict reconstruction programmes. In addition:

(a) Rehabilitation programmes must take into account the often widespread nature of sexual assault and rape and formulate programmes to address the specific needs of survivors of sexual assault;

(b) Programmes must be developed to address the special needs of female ex-combatants;

(c) Special initiatives must also be developed to ensure that the security and subsistence concerns of war widows and other female heads of household are adequately addressed.

119. A full-scale assessment of the impact of armed conflict on women, as called for by Security Council resolution 1325 (2000), is urgently needed so as to provide the information necessary for the formulation of more effective programmes for the protection and assistance to women and girls.

120. Taking note of the important recommendations made by the Secretary-General in his July 2000 report to the Security Council on Children and armed conflict (A/55/163-S/2000/712), additional research and monitoring should be conducted regarding the impact of conflict on girls, as well as on the impact of international programmes intended to protect girls in wartime and to respond to their needs, so as to improve programming and protection.

121. The international community should work towards the creation of an international body, similar to the Office of the United Nations High Commissioner for Refugees (UNHCR), that would be specifically mandated to protect and assist IDPs, or at least a centralized coordinating mechanism so that there can be a quick and uniform international response to situations of internal displacement, as has been outlined by the Representative of the Secretary-General.

122. Although already under way, greater efforts must be made to ensure the participation of women and girls in the design of refugee and IDP camps and the distribution of humanitarian aid. Appropriate steps must also be taken to improve lighting, change camp layout, increase security patrols, address provision of firewood, locate water sources and latrines in safe areas, and employ women guards.

123. The United Nations should initiate programmes to inform non-State actors of their obligations under international humanitarian law and the specific impact that the establishment of the ICC may have on them.

B. National

124. All States should ratify the relevant international instruments, including the Rome Statute of the ICC, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the ILO Worst Forms of Child Labour Convention (No. 182), and the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination, and ensure that the legal standards created therein are fully respected and that those who violate these instruments are held accountable.

125. All Governments and non-State actors should abide by and ensure enforcement of the Guiding Principles on Internal Displacement. States should provide protection and assistance to those displaced within their territory and should guarantee unconditional and unhindered access of international and domestic humanitarian agencies to the displaced.

126. States must ensure the safety of camps for refugees and IDPs, especially against infiltration by armed groups, and must adopt effective measures to guarantee the particular security concerns of women and children displaced by conflict, including measures against rape and other gender-based violence.

127. States should refuse to provide arms, or financial or political support for Governments or non-State actors who violate international humanitarian law, including by committing rape or other sexual violence against women and children. States must also take extra precautions to ensure that armed groups do not use their territory to hold abducted women and girls or to traffic them into forced prostitution or forced labour.

128. States should create gender-sensitized training and education programmes for their armed forces and civilian police and peacekeeping units that include instructions on their responsibilities towards the civilian population, particularly women and children. In this regard, States should elaborate and enforce a code of conduct for their military and civilian personnel based abroad and should hold those who violate the code accountable.

129. Member States should make sure that the representation of women is increased in lists of nationals available for secondment as military observers, police, peacekeepers, human rights and humanitarian personnel and special representatives.

130. Member States should provide the financial and political support to ensure adequate gender-sensitive training and sufficient numbers of senior gender advisers, as well as child protection officers, for key United Nations agencies working with peacekeeping, humanitarian assistance and post-conflict rehabilitation and reconstruction.

131. Governments that are involved in funding reconstruction programmes should make sure that these programmes take into consideration the special needs and wartime experiences of women and girls in formulating programmes. In particular, States should develop gender-sensitive programmes, including health care and trauma counselling, to deal with the special needs of young girls and women who have been sexually abused and raped during armed conflicts.

132. Governments that are currently faced with conflict and/or a post-conflict situation should include women in all reconciliation and reconstruction activities, and ensure that all repatriation and resettlement programmes, as well as rehabilitation, reintegration and post-conflict reconstruction, address the special needs of women and take into account their specific wartime experiences in formulating programmes.

133. States should develop and improve national systems for the collection of comprehensive and data disaggregated by gender.

134. In countries where there is armed conflict. Women and women's groups should be fully involved in the peace process and special efforts should be taken to ensure that women's needs and interests are included in the political negotiations.

135. Mechanisms for accountability with regard to war crimes and human rights abuses should ensure that cases involving violence against women are prosecuted and the perpetrators brought to justice. Compensation for the victims should also be considered. All peace negotiations should include such provisions.

Notes

[1] Report of the Special Rapporteur on violence against women, its causes and consequences, submitted by Ms. Radhika Coomaraswamy in accordance with Commission resolution 1997/44 (E/CN.4/1998/54), 26 January 1998 (hereinafter referred to as the "1998 report").

[2] The Special Rapporteur would like to especially thank Holly Cartner for her input, as well as Julia Hall from Human Rights Watch for her research on the work of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and the Asia Pacific Forum on Women, Law and Development for the submissions on armed conflict from throughout the Asian region.

[3] "Gender" for the purposes of the Statute is defined as "the two sexes, male and female, within the context of society". Rome Statute of the ICC, article 7 (3).

[4] Ibid., article 8 (2) (b) (xxii).

[5] Ibid., article 8 (2) (e) (vi).

[6] Ibid., article 7 (1) and (1) (g).

[7] Ibid., article 7 (2) (c).

[8] Ibid., article 7 (1) (h).

[9] Ibid., article 6 (b) and (d).

[10] Ibid., article 21 (3).

[11] Ibid., article 8 (2) (b) (xxvi).

[12] Ibid., article 36 (8) (a) (iii) and (b).

[13] Ibid., article 42 (9).

[14] Ibid., article 43 (6).

[15] On 11 November 1999, Tadic was sentenced to 25 years' imprisonment. That sentence was later reduced by the Appeals Chamber to a maximum of 20 years. International Criminal Tribunal of the Former Yugoslavia, Fact Sheet on ICTY Proceedings, November 2000.

[16] The original indictment in the *Tadic* case charged Tadic with the rape of a woman detainee, Witness F. As the trial drew near, Witness F. withdrew and refused to testify. Some observers claimed that the witness withdrew because she was too frightened to testify and many viewed her retreat as emblematic of the Tribunal's failure to provide adequate witness protection, particularly to women survivors of sexual assault. Witness F.'s refusal to participate forced the Prosecutor to amend the indictment, withdrawing the rape charges against Tadic. The Tribunal thus turned to a consideration of the broader setting in which Tadic operated an environment characterized, in part, by brutal sexual violence. See for example, Kelly Askin, Sexual Violence in ICTY and ICTR Indictments and Decisions: The Current Status of Prosecutions Based on Gender-Based Crimes Before the ICTY and ICTR: Developments in the Protection of Women in International Humanitarian Law, *American Journal of International Law*.

[17] *Prosecutor v. Tadic*, Indictment, para. 2.6.

[18] The *Tadic* court stated that the crime of persecution encompasses acts of varying severity, from killing to a limitation on the type of professions open to a targeted group. *Prosecutor v. Tadic*, Judgement, 7 May 1997, para. 704. In important dicta, the court also addresses the issue of whether a single act can constitute a crime against humanity: clearly, a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable. Although it is correct that isolated, random acts should not be included in the definition of crimes against humanity, that is the purpose of

requiring that the acts be directed against a civilian population and thus even an isolated act can constitute a crime against humanity if it is the product of a political system based on terror or persecution. Ibid., para. 649 quoting Henri Meyerowitz in the report of Special Rapporteur D. Thiam of the International Law Commission (A/CN.4/466), para. 89.

[19] *Prosecutor v. Blaskic*, No. IT-95-14, Judgement, 3 March 2000. Blaskic was acquitted on charges of committing genocide.

[20] ICTY Statute, article 7 (1).

[21] *Prosecutor v. Blaskic*, Judgement, para. 203. The other three elements were: (a) the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community; (b) the perpetration and use of significant public and private resources, whether military or other; and (c) the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.

[22] *Prosecutor v. Delalic, et al.*, Case No. IT-96-21-A, 16 November 1998. For other acts, Delic was also convicted of wilful killing and murder, torture, inhuman and cruel treatment, causing great suffering or serious injury, and the unlawful confinement of civilians.

[23] The *Celebici* court further notes that the United Nations has recognized that violence directed against a woman because she is a woman, including acts that inflict physical, mental or sexual harm or suffering, represent a form of discrimination that seriously inhibits the ability of women to enjoy human rights and freedoms. Thus, the court supported the view that gender discrimination can provide a basis for prosecuting rape as torture. *Delalic, et al.*, Judgement, para. 493.

[24] For example, numerous witnesses testified that Delic was a commander with all the requisite power the position implies. Ibid., para. 798.

[25] *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998.

[26] Ibid., paras. 165-171.

[27] The objective elements of rape include:

(i) the sexual penetration, however, slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator;

(ii) by coercion or force or threat of force against the victim or a third person.

Ibid., para. 185. The court states that forced oral sex can be just as humiliating and traumatic for the victim as vaginal or anal penetration and that a broad definition of what constitutes a rape comports with the fundamental principle of protecting human dignity. Ibid., para. 184.

[28] Ibid., para. 162.

[29] Ibid.

[30] Ibid., para. 26.

[31] The ICTY rules do not include a special privilege for medical or counselling records. Many critics of the *Furundzija* court's actions have called on the ICTY to amend the Rules of Procedure and Evidence to include a privilege for medical or rape counselling records that would prohibit their disclosure unless the court is convinced, after in camera review, of the defence's contention that the records are not only relevant but exculpatory. The final version of the Rules of Procedure and Evidence of the ICC does recognize as privileged those communications between a person and his or her medical doctor, psychiatrist, psychologist or counsellor under rule 73 (3). Preparatory Commission for the International Criminal Court, report of the Working Group on Rules of Procedure and Evidence (PCNICC/2000/WGRPE/L.8), 27 June 2000, p. 5.

[32] *Furundzija*, Case No. IT-95-17/1-A, Appeals Judgement, 21 July 2000.

[33] Between July 1992 (April 1992 for Vukovic) and February 1993, the accused are charged with raping women in detention facilities; taking women out of detention centres to houses, apartments and hotels to rape them; forcing women to undress and dance nude before groups of soldiers and police; engaging in gang rape and public rapes; detaining women in houses and apartments used as brothels; forcing women to perform domestic chores in houses and apartments, as well as forcing them to submit to sexual assaults; and selling women in exchange for money. The rapes included vaginal, anal and oral penetration and fellatio. Kunarac is charged with command responsibility for the acts of sexual violence committed by his subordinates. Many of the victims were children; one girl was 12 and one 15 at the time they were raped and serially sexually abused at Foca. Many of the women were serially raped over long periods of time. Many suffered permanent gynaecological damage as a result of the abuse, including one woman who can no longer conceive as a result of such damage. The indictments also recount the rape of a woman seven months pregnant.

[34] ICTY press release, 27 June 1996.

[35] *Blaskic*, Judgement, note 179.

[36] The doctrine of command responsibility holds those in positions of superior authority liable for the acts of their subordinates. See ICTY Statute, article 7 (3).

[37] In addition to Milosevic, Milan Milutinovic, the President of Serbia, Nikola Sainovic, Deputy Prime Minister of the Federal Republic of Yugoslavia, Dragoljub Ojdanic, Chief of Staff of the Yugoslav Army, and Vlajko Stojiljkovic, Minister of Internal Affairs of Serbia, were also indicted.

[38] ICTY press release, "ICTY Prosecutor, Carla Del Ponte, releases background paper on sexual violence investigation and prosecution". The Hague, 8 December 1999.

[39] *Prosecutor v. Akayesu*, ICTR-96-4, 13 February 1996, amended ICTR-96-4-I, 17 June 1997.

[40] The indictment defines acts of sexual violence to include "forcible sexual penetration ... and sexual abuse, such as forced nudity". Ibid., para. 10A. The original *Akayesu* indictment did not include any charges for crimes of sexual violence despite overwhelming evidence of mass rapes at Taba commune. A lack of political will among some high-ranking Tribunal officials as well as deficient investigative methodologies employed by some of the investigative and prosecutorial staff of the ICTR accounted for this omission. The indictment was amended after numerous Tutsi women testified and spoke out publicly about sexual violence in Taba commune. See also Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath*, September 1996, detailing the massive amount and systematic nature of sexual violence during the Rwandan genocide. In June 1997, the *Akayesu* indictment was amended to reflect the pivotal role that sexual violence played in the genocide of Tutsis in Taba commune.

[41] During the *Akayesu* trial, several Tutsi women testified that they were subjected to repeated collective rape by militia in and around the commune office, including in view of Akayesu. They spoke of witnessing other women being gang-raped and murdered while Akayesu stood by. In one instance, Akayesu was present during such a rape/murder and reportedly told the rapists, "[n]ever ask me again what a Tutsi woman tastes like". *Prosecutor v. Jean Paul Akayesu*, Prosecution's Closing Brief, volume I, 29 April 1998, para. 165. In addition, victims and witnesses at trial described other acts of sexual violence including public rape, rape with objects such as machetes and sticks, sexual slavery, forced nudity, and the rape of girl children.

[42] *Akayesu*, Amended Indictment, para. 12B.

[43] *Akayesu*, Judgement, 2 September 1998, para. 31 (under sect. 7.8, Count 1 - Genocide, Count 2 - Complicity in Genocide).

[44] Ibid., para. 52.

[45] *Akayesu*, Amended Indictment, para. 10A.

[46] *Akayesu*, Judgement, paras. 596-598, sect. 6.4, Crimes against Humanity.

[47] *Prosecutor v. Musema*, ICTR-96-13-I Judgement, 27 January 2000, para. 907.

[48] Ibid., para. 933.

[49] Ibid., para. 966.

[50] *Prosecutor v. Ntahobali*, Case No. ICTR-97-21-I, 26 May 1997.

[51] *Prosecutor v. Semanza*, Case No. ICTY-97-20-I, Amended Indictment, 23 June 1999.

[52] *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-I, Amended Indictment, 17 September 1999.

[53] Human Rights Watch, *World Report 2001*, p. 457.

[54] In the indictment of Dragoljub Kunarac, the defendant is alleged to have held women in the military headquarters and forced them to provide sexual and domestic services. The defendant was charged with the crime of enslavement. *Prosecutor v. Gagovic and Others* ("Foca" case), Case No. IT-96-23, Decision on Defence Preliminary Motion on the Form of the Amended Indictment, 21 October 1998.

[55] In addition, in many conflicts Governments use paramilitaries, either officially or informally linked to the Government. For purposes of this discussion, such paramilitary units are considered State agents, for whose conduct the State is accountable.

[56] *Children in armed conflict: report by the Secretary-General*, A/55/163-S/2000/712, 19 July 2000, para. 34.

[57] In case studies from El Salvador, Ethiopia and Uganda, it was found that reportedly a third of child soldiers were girls. Coalition to Stop the Use of Child Soldiers, *Girls With Guns: An Agenda On Child Soldiers For Beijing Plus Five* (http://www.child-soldiers.org/themed_reports/beijing_plus.html), p. 1. See also Susan McKay and Dyan Maurana, "Girls in militaries, paramilitaries, and armed opposition groups", unpublished, p. 5.

[58] The International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999, came into force on 19 November 2000, prohibiting forced or compulsory labour, including the forced recruitment of child soldiers (ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 17 June 1999). The Commission on Human Rights in resolution 1999/80 called upon all States, among other things, to take effective action against violations of girls' human rights and fundamental freedoms (para. 7). The special situation of child soldiers was also addressed in the Rome Statute of the ICC, which identified the conscription, enlistment or active use in hostilities of child soldiers under the age of 15 as a war crime (art. 8 (2) (b) (xxvi)).

[59] General Assembly resolution 54/263 of 26 June 2000, annex I, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Optional Protocol also calls on non-State actors to stop the recruitment and use of children under 18.

[60] Additional report of the Special Representative of the Secretary-General for Children and Armed Conflict, Mr. Olara Otunnu, submitted in accordance with General Assembly resolution 53/128 (E/CN.4/2000/71 of 9 February 2000), para. 45.

[61] "Special Representative for Children and Armed Conflict welcomes Rwandan law allowing girls to inherit property", press release HR/4465, 20 March 2000.

[62] Security Council resolution 1261 (1999) of 25 August 1999, para. 10. Similarly, on 11 August 2000, the Security Council underlined:

> "the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, inter alia, those heading households, orphaned, sexually exploited and used as combatants, and urges that their human rights, protection and welfare be incorporated in the development of policies and programmes, including those for prevention, disarmament, demobilization and reintegration". Security Council resolution 1314 (2000) of 11 August 2000, para. 13.

[63] For a detailed discussion of the factors that affect refugee women, see the 1998 report (E/CN.4/1998/54), paras. 166-178.

[64] Women and children make up the overwhelming majority of refugees and internally displaced persons around the world - most estimates indicate that women and children make up at least 80 per cent of all displaced persons worldwide. For example, in Colombia women and children make up approximately 80 per cent of all internally displaced. Some 58 per cent of the internally displaced are women while 55 per cent are under 18 years of age. Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, addendum. Profiles in displacement: follow-up mission to Colombia (E/CN.4/2000/83/Add.1 of 11 January 2000), para. 32.

[65] The treatment of IDPs is governed, however, by international human rights and humanitarian law.

[66] Document E/CN.4/1998/53/Add.2 of 11 February 1998, principle 11. See also principle 4. The Guiding Principles are also available on the OHCHR Web site (www.unhchr.ch) in 16 languages.

[67] Internally displaced persons: report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1999/47 (E/CN.4/2000/83), paras. 35-37.

[68] A recent UNIFEM study on violence against women in post-conflict Kosovo concluded that, while domestic violence existed before the war, "it appears to have increased since the conflict. Possible explanations ... [include] increased acceptability of violence as a way to solve problems, the breakdown of tight family and social structures, a general rise in instability and uncertainty, the increased sense of powerlessness amongst the community ...". *No Safe Place: Results of an Assessment on Violence against Women in Kosovo* (sect. 6 on domestic violence - First Incidence of Violence), UNIFEM, Prishtina, April 2000.

[69] Tim Kemanusian, Timor Barat Sekretariat, Report of VAW Investigations in IDP/Refugee Camps in West Timor, Kupang-ntt, Indonesia, August 2000.

[70] See, for example, George Boehmer, Tragedy in Kosovo (www.abcnews.go.com/sections/world/DailyNews/kosovo000412.html), 12 April 2000.

[71] UNMIBH/OHCHR, "Report on Joint Trafficking Project of UNMIBH/OHCHR", May 2000. Between March 1999 and March 2000, UNMIBH and OHCHR intervened in 40 cases of trafficking and possible trafficking in persons, involving 182 women. The report states that, "In approximately 14 cases ... there was compelling evidence of complicity by police, primarily local officers but also some international police, as well as foreign military (SFOR troops)."

[72] Ibid., p. 7.

[73] Graça Machel, The Impact of Armed Conflict on Children: A critical review of progress made and obstacles encountered in increasing protection for war-affected children, report presented at the International Conference on War-Affected Children, Winnipeg, Canada, 10-17 September 2000, p. 19.

[74] Japan NGO Report Preparatory Committee, Women 2000: Japan NGO Alternative Report, 13 August 1999 (http://www.jca.apc.org/fem/bpfa/NGOreport/E_en_Conflict.html). Report prepared for the "Beijing + 5" Special Session of the General Assembly in June 2000.

[75] "U.S. soldier sentenced to 6 years in prison for murdering barmaid", The Korea Herald, 8 November 2000.

[76] Security Council resolution 1265 (1999) of 17 September 1999, paras. 13 and 14.

[77] Security Council resolution 1325 (2000) of 31 October 2000, preamble.

[78] One positive example: women's and human rights groups in Burundi have been striving for greater participation of women in the peace process. Ultimately the women's groups were granted Permanent Observer Status at the talks. On 16 August 2000, all negotiating parties to the Burundi peace negotiations agreed to accept many recommendations that had been put forward by Burundi women's groups representing all 19 negotiating political parties. The recommendations include: the establishment of mechanisms to punish and put an end to war crimes such as rape and sexual violence; guarantees for women's rights to property, land and inheritance; measures to ensure women's security and safe return; and guarantees that girls have the same rights as boys to all levels of education. UNIFEM press release, "Consensus reached on women's centrality to a new Burundi", 16 August 2000.

[79] Truth and Reconciliation Commission Final Report, vol. 4, chap. 10, Special Hearing: Women, p. 1. Available at (http://www.polity.org.za/govdocs/commissions/1998/trc/4chap10.htm).

[80] Ibid.

[81] Donna Ramsey Marshall, *Women in War and Peace*, United States Institute of Peace, August 2000, p. 21, quoting the Truth and Reconciliation Commission Final Report.

[82] Report of the Special Rapporteur on violence against women, its causes and consequences, addendum: mission to Pakistan and Afghanistan (1-13 September 1999) (E/CN.4/2000/68/Add.4), para. 13.

[83] Human Rights Watch, "The massacre in Mazar-I-Sharif", November 1998, p. 12.

[84] Report on the situation of human rights in Afghanistan, submitted by Mr. Kamal Houssain, Special Rapporteur, in accordance with Commission resolution 1999/9 (E/CN.4/2000/33), para. 44.

[85] At the time of its investigation into humanitarian law violations in Mazar-I-Sharif, Human Rights Watch noted that it "was not able to locate witnesses" who were willing or able to describe specific incidents in detail, but nevertheless believed that "the allegations are serious enough to warrant special attention in any formal investigation into assaults on civilians during the takeover of Mazar-I-Sharif". Human Rights Watch, "The massacre in Mazar-I-Sharif", p. 12.

[86] Report on the situation of human rights in Afghanistan, op. cit., para. 45.

[87] Report of the Special Rapporteur on violence against women, mission to Pakistan and Afghanistan, op. cit., para. 44.

[88] Human Rights Watch, World Report 2001, p. 35.

[89] Ibid., p. 37.

[90] The International Rescue Committee, a United States-based humanitarian organization working in the Burundian refugee camps, documented 122 cases of rape and 613 cases of domestic violence in four camps in 1998. There were 111 rapes and 764 cases of domestic violence reported in the same camps in 1999, as cited in Human Rights Watch, Seeking Protection: Addressing Sexual and Domestic Violence in Tanzania's Refugee Camps, October 2000, p. 2.

[91] Ibid., p. 5.

[92] Human Rights Watch, World Report 2001, p. 114.

[93] Amnesty International, *Urgent Action: Colombia*, AI Index: AMR 23/50/00, 21 June 2000.

[94] Amnesty International, *Colombia: Barrancabermeja: A City Under Siege*, AI Index: AMR 23/036/1999, 1 May 1999.

[95] These include the government forces of President Laurent Désiré Kabila together with forces from Angola, Zimbabwe and Namibia against the Congolese Rally for Democracy (Rassemblement congolais pour la démocratie) together with forces from Rwanda, Uganda and Burundi, as well as a number of traditional militia groups.

[96] Human Rights Watch, World Report 2001, p. 449. See also Human Rights Watch, Eastern Congo Ravaged, May 2000.

[97] Information from the Goma-based NGO, Promotion et appui aux initiatives féminines.

[98] Report on the situation of human rights in the Democratic Republic of the Congo submitted by Mr. Roberto Garretón, Special Rapporteur, in accordance with Commission resolution 1999/56 (E/CN.4/2000/42), para. 111.

[99] Ibid., para. 117.

[100] Amnesty International, Annual Report 2000, p. 129.

[101] Note by the Secretary-General transmitting the report of the joint mission to East Timor (A/54/660 of 10 December 1999), para. 48. For cases, see also paras. 50 and 51. See also Report of the High Commissioner for Human Rights on the situation of human rights in East Timor submitted to the Commission on Human Rights at its fourth special session (E/CN.4/2000/44, annex, of 24 March 2000), paras. 35 and 36.

[102] Serious investigations into rape as an element of crimes against humanity only began in July; before then only two rape cases from 1999 were under active investigation. One factor was the lack of women investigators. Less than 4 per cent of the civpol force overall was female, and of the handful of women investigators, only one had special training in investigating sexual crimes. Human Rights Watch, World Report 2001, p. 192.

[103] Identical letters dated 31 January 2000 from the Secretary-General addressed to the President of the General Assembly, the President of the Security Council and the Chairperson of the Commission on Human Rights transmitting the report of the International Commission of Inquiry on East Timor (S/2000/59).

[104] Human Rights Watch, Kosovo: Rape as a Weapon of Ethnic Cleansing, March 2000, p. 10.

[105] Human Rights Watch, World Report 2000, p. 439.

[106] Human Rights Watch, Kosovo, op. cit., p. 18.

[107] See UNHCR/OSCE, Assessment of the Situation of Ethnic Minorities in Kosovo, (Period covering November 1999 through January 2000), 12 July 2000.

[108] The ERRC interviewed an eyewitness who reported that his sister and wife had been raped by four men in Djakovica on 29 June. They also interviewed the relative of a woman from Kosovska Mitrovica who had been raped on 20 June by six men in KLA uniforms.

European Roma Rights Center, "Press statement: the current situation of Roma in Kosovo", 9 July 1999, p. 1. See also Human Rights Watch, Abuses against Serbs and Roma in the New Kosovo, August 1999.

[109] Report of the Committee on the Elimination of Discrimination against Women, Official Records of the General Assembly, Fifty-fifth session, supplement No. 38 (A/55/38), paras. 30-90.

[110] Human Rights Watch, Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue, July 1999, p. 12.

[111] Amnesty International, Children in South Asia: Securing their rights, Amnesty International Index: ASA 04/01/98, p. 41.

[112] Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, addendum: mission to Indonesia and East Timor on the issue of violence against women (E/CN.4/1999/68/Add.3), para. 71.

[113] Amnesty International Canada, "Refugees at risk: continued attacks on East Timorese" at www.amnesty.ca/women/freedom5b.html, updated 17 June 2000.

[114] Amnesty International, "Indonesia: The impact of impunity on women in Aceh", ASA 21/060/2000, 23 November 2000, p. 3.

[115] The Asian Women's Fund, which was set up by the Government of Japan in 1995, was intended to collect private sources of money for former comfort women and to fund the work of NGOs that are working with these victims. However, many victims have refused to accept the money offered by the Fund, considering it insulting and primarily an effort by the Government to evade actual responsibility. These victims have demanded instead real compensation and an official apology for the crimes committed against them.

[116] Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime (E/CN.4/1996/53/Add.1 and Corr.1), sect. IX.

[117] An analysis of the legal liability of the Government of Japan for "comfort women stations" established during the Second World War (E/CN.4/Sub.2/1998/13), appendix.

[118] Cited in the update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/2000/21), para. 75.

[119] Cited in ibid., para. 76.

[120] Ibid.

[121] "Japanese court rejects Korean comfort woman's appeal", Korea Times, 1 December 2000.

[122] Soh Ji-young, "Civil tribunal to convene on wartime sex slavery crimes of Japan", Korea Times, 9 November 2000.

[123] Situation of human rights in Myanmar: report of the Special Rapporteur, Mr. Rajsoomer Lallah, submitted in accordance with Commission on Human Rights resolution 1999/17 (E/CN.4/2000/38), para. 50.

[124] Interim report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1998/261 of 30 July 1998 (A/53/364, annex), para. 51.

[125] Interim report on the situation of human rights in Myanmar, prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1999/231 of 27 July 1999 (A/54/440, annex), para. 36.

[126] Human Rights Watch, World Report 2001, p. 316.

[127] Human Rights Watch, "Rape allegations surface in Chechnya", 20 January 2000.

[128] Human Rights Watch, February 5: A Day of Slaughter in Novye Aldi (June 2000), vol. 12, No. 9 (D), p. 28.

[129] Human Rights Watch, "Sexual violence in the Sierra Leone conflict", 26 September 2000, unpublished.

[130] Amnesty International, Sierra Leone: Rape and Other Forms of Sexual Violence Against Girls and Women, AI Index: AFR 51/35/00, 29 June 2000, p. 2.

[131] Amnesty International, Annual Report 2000, Sierra Leone, p. 209. See also, Human Rights Watch, Getting Away with Murder, Mutilation, and Rape: New Testimony from Sierra Leone, June 1999 and Otunnu, op. cit. (E/CN.4/2000/71), para. 11.

[132] McDougall, op. cit. (E/CN.4/Sub.2/2000/21), paras. 16 and 17.

[133] The report proposes that the Court be a hybrid, using both international and Sierra Leonean law, judges and prosecutors.

[134] Human Rights Watch, press release, "Refugee women in Guinea raped: Government incites attacks on Sierra Leonean and Liberian refugees; UNHCR must act", 13 September 2000.

[135] United Nations press release, 14 March 2000.

[136] The University Teachers for Human Rights, information bulletin No. 23, 11 July 2000.